IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/06/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

Habeas Corpus Petition No.673 of 2004

M. Krishnamurthi .. Petitioner

-Vs-

1. T. Samarakodi

2. The State of Tamil Nadu
rep. by the Sub Inspector of Police
G9, Thazhambur Police Station
Kancheepuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.B. Thanikachalam

For Respondent-1 : Mr.K. Sankar Krishnan

For Respondent-2 : Mr. Abudukumar Rajaratnam
Additional Public Prosecutor

:O R D E R

(The order of the Court was made by
P.D.DINAKARAN, J.)
The petitioner, claiming himself as the husband of one Thangamani, and complaining that she has been illegally detained by her father, the first respondent herein, seeks a writ of Habeas Corpus directing the respondents to produce the detenue before this Court and set her at liberty.

2. According to the petitioner, he married the detenue Thangamani on 5.5.2004 and lived with her till 14.6.2004.

3. After notice, the first respondent produced the detenue Thangamani before this Court. The said Thangamani is a post graduate in M.A. Tamil Literature and aged about 24 years. She is capable of understanding the pros and cons of her choice and decision with respect to the friendship developed

with the petitioner. She openly denies the marriage said to have taken place on 5.5.2004 and the registration of the same by one J.John Amulraj, the Registrar who solemnized the marriage under the Christian Marriage Act and issued a certificate to that effect. She questions the validity of the said marriage, as the petitioner never converted himself to Christianity and he continues to be a Hindu till date and therefore, the marriage could not have been solemnized between them by the Registrar of Marriage under the Christian Marriage Act.

4. The petitioner, who also appeared before us, states that the detenue married him on her own volition, in the presence of elders and the Registrar and the same was registered before the Registrar of Marriage under the Christian Marriage Act and he also fairly concedes that even though he used to go to Church and pray, he had not converted himself to Christianity and in all respects he continues to be a Hindu.

5. It is trite law that a writ of habeas corpus at the instance of a man to obtain possession of a woman alleged to be his wife does not issue as a matter of course. Though a writ of right, it is not a writ of course especially when a man seeks the assistance of the Court to regain the custody of a woman. Before a Court accedes to this request it must satisfy itself at least prima facie that the person claiming the writ is in fact the husband and further whether valid marriage between him and woman could at all have taken place, vide Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625. Therefore, the very locus standi of the petitioner to seek the relief as prayed for, in his capacity as the husband of the detenue, is at stake.

6. Be that be, since the detenue is not willing to go with the petitioner and on her own volition she stays with her father, the petitioner is not interested to press the above writ petition. Hence, finding no merits in the writ petition, the same is dismissed.

7. However, as the petitioner apprehends that the first respondent and his relatives would cause danger to his life and body, the father of the detenue, viz. the first respondent as well as the detenue undertake that they would not either cause any danger to life of the petitioner as apprehended by him and the above statement of the first respondent and the detenue is put on record.

8. Before parting with the order, since it was brought to our notice that the petitioner relies upon a marriage certificate issued by one J.John Amulraj, the validity of which, in our opinion, is ambiguous, we direct the police to enquire into the authenticity of the certificate referred to above, and also refer the matter to the licensing authority who issued licence to J.John Amulraj for issuing certificate under the Christian Marriage Act. On such notice, the licensing authority shall hold an enquiry and pass appropriate orders, of course, after giving fair and reasonable opportunity to J.John Amulraj.

Index : Yes
Internet : Yes

To

1. The Sub Inspector of Police
G9, Thazhambur Police Station
Kancheepuram District.

2. The Public Prosecutor
High Court, Madras.

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